

**154.30-070 Terms and conditions of tax incentive agreements to be negotiated between authority and agency -- Provisions of agreement -- Pledge of incremental revenues superior to other pledges of revenues -- Renewal and discontinuance of agreement.**

- (1) The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the agency. The tax incentive agreement shall include but not be limited to the following provisions:
  - (a) Identification of the parties to the tax incentive agreement and the duties and responsibilities of each party to the tax incentive agreement;
  - (b) The specific identification of the state tax revenues, by type of tax, to be released or pledged by the Commonwealth for the project;
  - (c)
    1. A detailed summary of old revenues collected and projected new revenues for the Commonwealth on an annual basis for the term of the tax incentive agreement; and
    2. The maximum amount of incremental revenue to be released by the Commonwealth and the maximum number of years the pledge of incremental revenues will be effective;
  - (d) A detailed description of each project that is the subject of the tax incentive agreement, including an estimate of the costs of construction or acquisition and development;
  - (e) Identification of the project footprint from which the state incremental revenues pledged by the Commonwealth are to be derived;
  - (f) The approved public infrastructure costs and, when applicable, approved signature project costs, approved financing costs, and approved costs relating to land preparation, demolition, and clearance that may be recovered;
  - (g) The minimum capital investment required, and the date by which the minimum capital investment is expected to occur;
  - (h) Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the tax incentive agreement of any incremental revenues if increment bonds are outstanding that are secured by a pledge of those incremental revenues;
  - (i) The termination date;
  - (j) A requirement that the agency, city, or county annually certify to the authority the use of incremental revenues for the payment of approved project costs within the development area;
  - (k) A requirement that the agency shall utilize the portion of incremental revenues pledged pursuant to a tax incentive agreement that exceeds, in a given year, the amounts needed to:
    1. Pay the current financing costs; and
    2. Maintain a fully funded reserve;

to provide for the retirement or defeasance of all or a portion of the remaining financing costs related to approved public infrastructure costs, and approved signature project costs secured by the incremental revenues;

- (l) A requirement that the agency, city, or county make periodic accountings to the authority;
  - (m) A requirement that the authority monitor and verify approved public infrastructure costs, financing costs and approved signature project costs and minimum capital investment; and
  - (n) For a signature project, the eligible refund percentage for the sales tax as permitted under KRS 139.515, and as determined by the authority pursuant to KRS 65.7075(6); and
  - (o) Any other provisions not inconsistent with this subchapter deemed necessary or appropriate by the parties to the tax incentive agreement.
- (2) Any pledge of incremental revenues in a tax incentive agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date, supersede any statute or ordinance regarding the application or use of incremental revenues. An ordinance in conflict with a tax incentive agreement shall not be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances pledging increments on a subordinate basis to any existing pledges may be adopted.
- (3) Any tax incentive agreement shall be made on the basis of automatic year-to-year renewals, with the option to discontinue upon sixty (60) days' notice before the end of any annual termination date of the tax incentive agreement.

**Effective:** July 15, 2008

**History:** Repealed, reenacted, and amended 2008 Ky. Acts ch. 178, sec. 20, effective July 15, 2008. -- Created 2007 Ky. Acts ch. 95, sec. 20, effective March 23, 2007.

**Legislative Research Commission Note (7/15/2008).** 2008 Ky. Acts ch. 178, sec. 14 established a new Subchapter 30 of Chapter 154 concerning tax increment financing projects and secs. 16 through 19 and 21 of that Act repealed, reenacted, and amended existing sections of KRS Chapter 65 as new sections of the new Subchapter 30 of KRS Chapter 154. Inquiry was made of the drafter as to the intent of those actions. The drafter explained that statutes dealing with both area development projects and tax increment financing projects were blended together in KRS Chapter 65 with no easy distinguishing elements, and the intent of creating Subchapter 30 of KRS Chapter 154 was to separate them appropriately. Therefore, the intent of secs. 16 through 19 and 21 was to move those sections contained in KRS Chapter 65 that relate to only tax increment financing projects into the new Subchapter 30 of KRS Chapter 154, with necessary conforming amendments to the language. The Reviser of Statutes inquired about the treatment of sec. 20 of that Act purporting to amend KRS 65.7079, which appeared to the Reviser to require the same treatment as other statutes in that range moved into new Subchapter 30 of KRS Chapter 154 in secs. 16 through 19 and 21. The drafter confirmed that the intent was to treat that statute in the same manner as those statutes addressed in secs. 16 through 19 and 21. As such, the Reviser of Statutes has treated sec. 20 in codification as repealing and reenacting this statute as a new section of Subchapter 30 of KRS Chapter 154 to effectuate that intent.

**Formerly codified as KRS 65.7079.**